



To: Family and Human Services Committee, Contra Costa Board of Supervisors  
From: Wendel Brunner, MD, Public Health Director, Contra Costa Health Services  
Re: Report on Policy Options to Protect Youth from Tobacco Influences in the Retail Environment  
Date: June 8, 2015 (*updated 7/7/15 by Tobacco Prevention Project Staff to address Family and Human Service Committee questions/concerns*)

## ***I. Background***

At their 5/5/15 meeting, the Board of Supervisors accepted the Health Services **2013 Healthy Stores for a Healthy Community Report**, (Att. I) and directed staff to develop and present a report on recommendations for *Policy Options to Protect Youth from Tobacco Influences in the Retail Environment*, and referred the report to the Family and Human Services Committee for recommendations to the full Board.

## ***II. The Problem of Youth Tobacco Use and the Retail Environment***

In summer, 2013, in order to get a picture of what tobacco industry influences look like in Contra Costa, Public Health's Tobacco Prevention Project participated in a county-wide tobacco survey. Over 300 stores were part of the randomized sample for the Contra Costa Store Survey, including convenience, supermarket, liquor, tobacco, small market, discount, drug and big box stores. Stores that prohibited youth from entry or that require membership were excluded from the survey. The Contra Costa Store Survey<sup>1</sup> findings confirmed that tobacco is still being promoted to youth and that:

- **Over 80% of stores near schools in Contra Costa sell flavored (non-cigarette) tobacco products** like "watermelon" and "tropical blast" flavored cigarillos and little cigars. Many of these products sell for under a dollar, making them very attractive and affordable for youth.
- **Over eight in 10 stores sell packs of 5 or less of cigarillos/little cigars, and close to 70% of stores sell these products as "singles".** These products are also available very cheaply, making them affordable for youth. Eighty-five percent of tobacco retailers sell the most popular brand of cigarillos for under \$1.
- **Close to half of all stores in Contra Costa sell e-cigarettes.** The number of stores that are selling e-cigarettes statewide has quadrupled, from just over 10% in 2011 to over 45% in 2013. The percentage of high school students who reported ever using e-cigarettes doubled between 2011 and 2012. Many of these products are attractive to youth because they are relatively cheap and come in flavors like cherry-limeade and mint.
- **Seven in 10 stores in Contra Costa have exterior advertising for *unhealthy* products** like tobacco, alcohol and sugary drinks. This compares with 1 in 10 stores with exterior advertising for *healthy* items including fruits, vegetables and non-fat/low-fat milk.

More information on the Store Survey is attached to this report. Information on the location and density of stores selling tobacco across the county was also collected and mapped. (See page 6 of Att. I.) This information found that:

- **34% of stores selling tobacco throughout the County are located within 1000 feet of a school.**
- One-third of youth who buy tobacco purchase these products within 1000 feet of school.<sup>2</sup>

<sup>1</sup> 2013 Healthy Stores for a Healthy Community (HSHC) Survey, California Department of Public Health.

<sup>2</sup> Lipton R, Banerjee A, Levy D, Manzanilla N, Cochrane M. [The spatial distribution of underage tobacco sales in Los Angeles.](#)



- Every school day, youth are exposed to tobacco influences such as advertising and product promotions on their way to and from school.
- Many of the Contra Costa communities with **high numbers of stores selling tobacco near schools** are low-income. Low-income communities have high rates of smoking and tobacco-related diseases like heart disease, cancers and stroke.

The 2013 Contra Costa Store Survey provides concrete, scientific evidence on how the tobacco industry continues to target youth and lower-income communities through the retail environment.

### ***III. Policy Options to Reduce Tobacco Influences in the Community***

Communities across the Country and state have increasingly adopted laws to address youth tobacco influences in the retail environment. The following policy provisions are recommended by staff to reduce youth tobacco influences in the retail environment. These policies are also highlighted in the American Lung Association's 2015 Report on the State of Tobacco Control for CA.

- A. Prohibit the sale of flavored (non-cigarette) tobacco products, such as candy, fruit and spice characterizing flavors in little cigars, hookah tobacco and dissolvable tobacco products, as well as in electronic smoking devices and vapor solutions for these devices.** Under the federal Family Smoking Prevention and Tobacco Control Act, it is illegal for manufacturers to make *cigarettes* that contain "characterizing flavors" other than that of tobacco, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa or chocolate. (Menthol flavoring in cigarettes was exempted and is discussed below.) The Act was enacted in 2009 largely because these flavored products were marketed to youth and young adults,<sup>3</sup> and younger smokers were more likely to have tried these products than older smokers.<sup>4</sup>

Flavored non-cigarette tobacco products have become increasingly common and are available in a variety of flavors that appeal to children and young adults.<sup>5</sup> The U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be "starter" products for youth and help establish smoking habits that can lead to long-term addiction.<sup>6</sup>

Adding flavorings to tobacco products such as little cigars, cigarillos, and smokeless tobacco can mask the natural harshness and taste of tobacco, making these products easier to use and increasing their appeal among youth.<sup>7</sup>

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Subst Use Misuse. 2008;43(11):1594-614.

- <sup>3</sup> Carpenter CM, Wayne GF, Pauly JL, et al. 2005. "New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies." *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. "Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands." *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. "Sweet and Spicy Flavours: New Brands for Minorities and Youth." *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).
- <sup>4</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).
- <sup>5</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 164, 205, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf); Morris DS and Fiala SC. 2013. "Flavoured, Non-cigarette Tobacco for Sale in the USA: An Inventory Analysis of Internet Retailers." *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/08/08/tobaccocontrol-2013-051059.full>.
- <sup>6</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf); U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).
- <sup>7</sup> King BA, Dube SR, and Tynan MA. 2013. "Flavored Cigar Smoking Among U.S. Adults: Findings from the 2009–2010 National Adult Tobacco Survey." *Nicotine & Tobacco Research*. 15(2): 608–614; Nelson DE, Mowery P, Tomar S, et al. 2006. "Trends in Smokeless Tobacco Use Among Adults and Adolescents in the United States." *American Journal of Public Health*. 96(5): 897–905.



The U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012.<sup>8</sup> Nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum.<sup>9</sup> The California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products.<sup>10</sup> In the Bay Area, Santa Clara County, Hayward and Sonoma have adopted similar laws, and Berkeley and El Cerrito are currently considering such regulations.

**B. Require a minimum pack size for sale of cigars, including cigarillos and little cigars.** Small packages of tobacco products make these products more accessible to youth, who are generally a more price-sensitive market. Although federal and state law ban the sale of individual cigarettes, neither restrict the sale of individual little cigars, cigarillos and cigars. Many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.<sup>11</sup> The cities of Hayward, Huntington Park and Sonoma currently regulate pack size, and El Cerrito is considering doing so.

**C. Prohibiting the sale of tobacco within at least 1000 feet of schools and other area youth sensitive areas.** Research has demonstrated that youth are more likely to experiment with tobacco products when retailers are located near schools, and that the number of tobacco retailers in a community affects youth smoking behaviors as well as access to tobacco products.<sup>12</sup> The density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates.<sup>13</sup> Restricting the location of all tobacco retailers near schools and other youth sensitive areas, as well as within a certain distance to each other, creates tobacco-free zones and reduces tobacco influences in the community. Twenty-four California cities and counties have adopted similar laws, including Santa Clara County and Union City. Sonoma recently adopted law that would prohibit any new retailers anywhere in the city. A map showing the Number of Tobacco Retailers within 1,000 Feet of a School, by City or Place in Contra Costa can be found in Attachment I.

**D. Reduce the density of tobacco retailers by prohibiting the location of new tobacco retailers within 500 feet of existing tobacco retailers** (density relative to other retailers), or capping the total number of tobacco retailer licenses issued. High density of tobacco retailers has been associated with

<sup>8</sup> Centers for Disease Control & Prevention. 2013. "Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012," *Morbidity and Mortality Weekly Report (MMWR)* 62(35): 729–730.

<sup>9</sup> Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>10</sup> Press Release, State of California Department of Justice, Office of the Attorney General, Brown Announces Electronic Cigarette Maker's Agreement to Stop Deceptive Marketing and Sales to Minors (Aug. 3, 2010), [oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing](http://oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing).

<sup>11</sup> California Department of Public Health. (2012). *Tobacco in the Retail Environment*, [www.cdph.ca.gov/programs/tobacco/Documents/Tobacco%20Retail%20Environment%20Fact%20Sheet\\_Easy%20Print.pdf](http://www.cdph.ca.gov/programs/tobacco/Documents/Tobacco%20Retail%20Environment%20Fact%20Sheet_Easy%20Print.pdf)

<sup>12</sup> McCarthy, W.J., Mistry, R., Lu, Y., Patel, M., Zheng, H., Dietsch, B., Density of tobacco retailers near schools: effects on tobacco use among students. *American Journal of Public Health*, 2009. 99(11): p. 2006–2013.

<sup>13</sup> Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210–214.



increased smoking rates, particularly among youth.<sup>14</sup> A study of California neighborhoods found that the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day.<sup>15</sup> Of additional concern, widespread presence of tobacco in retail settings normalizes the use of tobacco products and triggers smoking urges among former smokers and those attempting to quit.<sup>16</sup> California law limits alcohol licenses based on density, and this policy applies that same rationale to tobacco retailers. Nine cities and counties in CA have adopted similar laws.<sup>17</sup>

**E. Create Tobacco Free Pharmacies.** A recent gallop poll showed Pharmacists are perceived by many as among the most trusted of health care professionals. Research indicates that by selling tobacco products, pharmacies reinforce positive social perceptions and send a message that it is not so dangerous to smoke. Children and young people are particularly influenced by cues suggesting that smoking is acceptable. The American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for state and local laws prohibiting tobacco sales in drugstores and pharmacies because doing so supports the public health and social welfare of the communities in which they practice. In the Bay Area, Richmond, San Francisco and Santa Clara County prohibit the sale of tobacco products in all pharmacies. Of the nine (9) licensed pharmacies in the unincorporated county, there are currently six (6) that currently sell tobacco products.

**F. Increase the Tobacco Retailer License Fee to fully cover the cost of education, enforcement and monitoring of all tobacco control laws, including youth decoy operations and any new provisions that are adopted.** The current Tobacco Retailer License fee was set in 2010, and reflects cost related to administration of the license and some site compliance checks. It does not cover the cost of youth decoy operations through the Sheriff's Office for enforcement of the "no sales to minors" law, which are funded at approximately \$18,000 annually (about \$180 per retailer) with County general funds. One policy option for consideration is to increase the current annual Tobacco Retailer License fee of \$287 to better reflect the actual cost of the program. The American Lung Association reports that as of September, 2013, ninety-eight of 110 jurisdictions in CA with tobacco retailer licensing were able to fully fund enforcement programs through tobacco retailer license fees. Further analysis would be needed in order to calculate any additional education, enforcement and implementation costs related to adoption of the specific provisions discussed in this report.

#### ***IV. The County's Tobacco Retailer Licensing Ordinance and the Retail Environment***

The County's Tobacco Retailer Licensing Ordinance requires all tobacco retailers to purchase a local license before they may sell tobacco in the community, and provides for suspension of that license if a violation of any local, state or federal law occurs. This has proven to be the only effective model of reducing illegal sales to minors. The sales rate in the unincorporated areas of the County decreased from 37% to 7% upon adoption and enforcement of its tobacco retailer licensing ordinance.

As strong Tobacco Retailer Licensing laws include compliance checks and enforcement including suspension for violations of tobacco laws, it is also a mechanism for effective management of other tobacco regulations, such as those discussed in this report. Location and density restrictions, as well as regulations of products

<sup>14</sup> Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.

<sup>15</sup> Chuang YC, Cubbin C, Ahn D, et al. 2005. "Effects of Neighbourhood Socioeconomic Status and Convenience Store Concentration on Individual Level Smoking." *Journal of Epidemiology and Community Health* 59: 568-573.

<sup>16</sup> McDaniel PA and Malone RE. 2011. "Why California Retailers Stop Selling Tobacco Products, and What Their Customers and Employees Think About It When They Do." *BMC Public Health* 11: 848.

<sup>17</sup> "Matrix of Local Ordinances Restricting Tobacco Retailers Near Schools, July 2013", Center for Tobacco Policy and Organizing.



that can be sold, can be a condition of the license. Enforcement of these regulations has been most effective under tobacco retailer licensing laws, rather than a combination of regulatory mechanisms.

Since adoption of the County's law in 2003 and the last update to the ordinance in 2013 to regulate electronic smoking devices, several "best practices" have emerged to increase its effectiveness in reducing illegal tobacco sales to minors and to act as an enforcement mechanism for other tobacco control laws. Staff recommends two other additional provisions be added to strengthen and update the current Tobacco Retailer Licensing Ordinance. These are to:

- 1) Require retailers to remove tobacco advertising during the license suspension period. Over 60 jurisdictions require this provision during license suspension period, when sales of tobacco products are prohibited.
- 2) Expand the time period reviewed for prior violations of the license from 24 months (2 years) to 60 months (5 years) when considering the length of the license suspension. Close to 70 other CA jurisdictions include this provision, as it can be more of an incentive for retailers to fully comply with tobacco control laws over time.

The above provisions are included in the Attachment II grid, Policy Options for Addressing Youth Tobacco Influences in The Retail Environment. The grid indicates those policies recommended as the most effective in the shaded boxes, and also includes other policy options that have been adopted by CA jurisdictions for consideration.

